

NTSB Order No. EA-4459

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of May, 1996

Docket SE-12680 RM

6428B

vacate is denied, he continues, then the Administrator would be free to revoke his airman certificates at that time.¹

It appears that respondent is under the mistaken impression that, even if his conviction is vacated, his certificate might be subject to permanent revocation. He argues that he is "now faced with the prospect of permanently losing his pilot and flight instructor certificates *even if his criminal conviction is vacated.*" Respondent's petition at 3 (emphasis in original).

Simply put, respondent's representation is inaccurate. The revocation of his airman certificates is not permanent. Rather, he is free to reapply for his certificates one year after the date of revocation, irrespective of whether or not his criminal conviction is vacated.² In fact, changing the order from revocation to an indefinite suspension could likely result in an even longer waiting period before being eligible to reapply for his certificates.³ Furthermore, the Administrator, so far as we are aware, is not obligated to refrain from pursuing an enforcement action under FAR section 61.15 until all possible appeals of respondent's drug-related conviction have been exhausted. See Administrator v. Berryhill, NTSB Order No. EA-4414 at 4 (1996).

Regarding respondent's request that the Board "be mindful" of the law judge's belief that suspension of respondent's pilot certificate would have been sufficient had he been found only to have intentionally falsified his medical application, in

¹ The parties stipulated before hearing that respondent had filed the 2255 motion, a fact of which the Board was aware when it issued its opinion and order. See NTSB Order No. EA-4407 at n. 5 and corresponding text.

² Section 61.13(g)(1) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 61.13(g)(1), provides as follows:

(g) Unless the order of revocation provides otherwise-

(1) A person whose pilot certificate is revoked may not apply for any pilot or flight instructor certificate for 1 year after the date of revocation.

By contrast, when the Administrator revokes an airman's certificate under Section 609(c) of the Federal Aviation Act, 49 U.S.C. § 44710(b), barring very specific exceptions, the revocation is permanent. See section 602(b)(2) of the Federal Aviation Act, 49 U.S.C. § 44703(e).

³ A person whose certificate is under suspension may not apply for any pilot or instructor certificate or rating. 14 C.F.R. § 61.13(f).

violation of FAR section 67.20(a)(1), and not to have committed a drug-related violation, we recognized that gratuitous comment in our opinion and order as dicta and, therefore, did not endorse the unwarranted speculation. Moreover, his argument is based on supposition that suspension would be consistent with precedent for intentional falsification. There is ample Board precedent, however, to support revocation for the intentional falsification of an application for a medical certificate. See, e.g., Administrator v. McDaniel, NTSB Order No. EA-4189 at 4 (1994), aff'd, 56 F.3d 1392 (11th Cir. 1995), and cases cited therein; Administrator v. Bodovinitz, NTSB Order No. EA-4179 at 9-10 (1994)("[O]ur own precedent clearly supports revocation of a respondent's airman certificates, as well as his medical certificate, for intentional falsification"); Administrator v. Twomey, 5 NTSB 1258 (1986), aff'd, 821 F.2d 63 (1st Cir. 1987).

ACCORDINGLY, IT IS ORDERED THAT:

The petition for modification is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.